IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ACCU-SPEC ELECTRONIC SERVICES, INC., Plaintiff	)	
v.	)	C.A. NO.: 03-394 E
CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC., Defendants	)	ELECTRONICALLY FILED

PLAINTIFF'S MEMORANDUM IN SUPPORT OF POST-TRIAL MOTION ON THE ISSUE OF AWARDING ATTORNEY FEES UNDER § 14704(e)

This Honorable Court determined at oral argument on September 20, 2005 that, as a matter of law, Plaintiff Accu-Spec Electronic Services ("Accu-Spec") did not have a cause of action against Defendant Central Transport International, Inc. ("Central Transport") under 49 U.S.C. § 14704. This Court then allowed Defendant Logistics Plus, Inc. ("Logistics Plus") to make an oral Motion for Summary Judgment on the same issue.

In summary, under 49 U.S.C. § 14704(a)(2), a carrier providing transportation or service subject to jurisdiction under Chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this part. Under 49 U.S.C. § 14704(e) the district court shall award reasonable attorney fees under this section.

The only authority relied upon by the Court was the unpublished Kansas intermediate appellate decision of Hoover v. Allied Van Lines, Inc., 111 P.3d 1076, 2005 WL 1277952 (Kan.

App. 2005). This Honorable Court should reconsider its grant of summary judgment based upon the Hoover decision for three reasons:

1. Hoover is factually distinguishable because the court's opinion was based upon the fact that the Hoovers' complaint did not allege violations of the loss and damage regulations and did not even plead a cause of action under Section 14704, but rather only alleged physical damage to their property. Id. at 3. To the contrary, Accu-Spec's Complaint alleged specific violations of the loss and damage regulations. In the present case, Accu-Spec alleged that:

a. it notified both Central Transport and Logistics Plus of its loss on February 21, 2003;

b. it submitted a formal claim to Central Transport pursuant to 49 C.F.R. § 370.3;

c. it supplemented its claim pursuant to 49 C.F.R. § 370.5;

d. Central Transport violated the requirement of 49 C.F.R. § 370.9 by not admitting, declining, or compromising a claim within 120 days after Accu-Spec supplemented its claim; and

e. it submitted a formal claim to Logistics Plus on November 12, 2003. (Complaint, ¶¶ 18-26, incorporated into Count I by paragraph 27). For this reason, Hoover is not factually controlling upon the present case.

2. Hoover has little, if any, authoritative value because the Westlaw version of the case contains the notation "Pursuant to Kansas Supreme Court Rule 7.04{f), unpublished opinions are not precedential and are not favored for citation. They may be cited for persuasive authority on a material issue not addressed by a Kansas appellate Court decision." Hoover, 2005 WL 1277952 at 1. Although Hoover may be the only Kansas decision citing Section 14704,

making citation permissible, there is little reason for this Court to disregard a recent district court opinion from within the Third Circuit which states that private parties can bring private causes of action under Section 14704. Crosby v. Landstar, 2005 U.S. Dist. Lexis 12008 at 3 (D. Del. June 21, 2005).

In Crosby, the court held that, with the enactment of the ICC Termination Act, Congress disposed of the Interstate Commerce Commission and transferred its responsibilities to the Department of Transportation. Congress, however, did not transfer all of the responsibilities of the ICC to the DOT. A section of the ICC Termination Act allows commercial disputes, which had been administratively adjudicated by the ICC, to be brought into federal court. Id., citing Owner-Operator Independent Drivers Association, Inc. v. New Prime, Inc., 192 F.3d 778, 784 (8th Cir. 1999).[1]

In New Prime, the Eighth Circuit held that that the legislative history to the Interstate Commerce Termination Act contemplated that private parties may bring actions to enforce the Motor Carrier Act. Id. at 787. The New Prime court recognized that the ICC Termination Act encompassed both the Truth-in-Lending regulations and the loss and damage regulations. Id., *citing* Committee Report. Therefore, the logic that permits private parties to bring private actions and recover attorney fees to enforce the Truth-in-Lending regulations also applies to Accu-Spec's claim brought under the loss and damage regulations now found in 49 C.F.R. § 370.1 et seq.

The loss and damage regulations are entitled "Principles and Practices for the Investigation and Voluntary Disposition of Loss and Damage Claims and Processing Value." 49

[1] In Crosby, the district court held that the plaintiff ultimately did not have a have a cause of action under Section 14704 because the plaintiff was suing to recover damages to his truck, not cargo which had been damaged by a carrier.

C.F.R. 370.1 et seq. Freight forwarders such as Logistics Plus are subject to the loss and damage regulations because freight forwarders are included in the definition of carrier. 49 C.F.R. § 370.1. Central Transport also fits the definition of carrier.

Under the regulations, a shipper such as Accu-Spec is required to send carriers a notice of claim which meets five minimal requirements:

1. the claim must be written or electronic communication;
2. the claim must be filed with a proper carrier within the time limits specified in the bill of lading;
3. the claim must contain facts sufficient to identify the shipped property;
4. the claim must assert liability for the alleged loss of damages; and
5. the claim must seek the payment of a specified or determinable amount of money.

49 C.F.R. § 370.3(b).

The regulations do not require that the claim contain every piece of information pertinent to processing. Even a proper claim that complies with all five minimum requirements may be insufficient for payment. For this reason, the regulations contemplate the supplementation of even fully sufficient claims with further documentary evidence. Molloy v. Allied Van Lines, Inc., 267 F. Supp. 2d 1246, 1254 (M.D. Fla. 2003).

After receipt of a claim:

> Each carrier shall, upon receipt in writing or by electronic transmission of a proper claim in the manner and form described in the regulations in the past, acknowledge the receipt of such claim in writing or electronically to the claimant within 30 days after the date of receipt by the carrier unless the carrier shall have paid or declined such claim in writing or electronically within 30 days of the receipt thereof. The carrier shall indicate in its acknowledgment to the claimant what, if any, additional documentary evidence or other pertinent information may be required by it further to process the claim as its preliminary examination of the claim, as filed, may have revealed.

49 C.F.R. § 370.5.

Furthermore, after receipt of a claim, carriers such as Central Transport and Logistics Plus are required to make a prompt and thorough investigation of the claim. 49 C.F.R. 370.7. Moreover, a carrier is required to admit, decline, or compromise a claim within 120 days. If the carrier cannot do so, it is required to advise the claimant of the reasons for its inability to do so and provide updates to the claimant at 60-day intervals. 49 C.F.R. § 370.9.

As set forth above, Accu-Spec alleged in its Complaint that the Defendants violated the loss and damage regulations. Therefore, Accu-Spec has stated a claim as a matter of law, and both Central Transport and Logistics Plus should be required to set forth undisputed facts as to why they are entitled to judgment as a matter of law.

3. The right of private parties to bring private causes of action under Section 14704 is consistent with the purposes of the Carmack Amendment: The Carmack Amendment, 49 U.S.C. § 14706 is intended:

a. to hold carriers responsible for damage they cause to transported goods;

b. to encourage payment of claims without litigation;

c. to facilitate prompt investigation of claims; and

d. to prevent carriers from discriminating between shippers by paying claims of favorite shippers while rejecting claims of others.

Georgia, Florida & Alabama Railway v. Blish Milling Co., 241 U.S. 190, 196-97 (1916) (emphasis added). An award of attorney fees is also supported by the purpose of the Carmack Amendment, which is to protect shippers from the negligence of interstate carriers, and to relieve shippers of the burden of searching out a particular negligent carrier from among the oftennumerous carriers handling an interstate shipment of goods. Fine Foliage of Florida v. Bowman Transportation, Inc., 901 F.2d 1034, 1037 (11th Cir. 1990).

Now that the Secretary of Transportation no longer enforces the loss and damage regulations (as determined by the Crosby and New Prime Courts), carriers such as Central Transport and Logistics Plus have very little incentive to treat occasional shippers such as Accu-Spec fairly when investigating claims. Enforcing a private cause of action under Section 14704 and awarding attorney fees under Section 14704(e) helps to ensure that carriers investigate and resolve claims promptly, thoroughly, and fairly.

For these reasons, this Honorable Court should reverse its entry of judgment as a matter of law in favor of Central Transport and Logistics Plus on Accu-Spec's claim brought under 49 U.S.C. § 14704.

Respectfully submitted,

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